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Department of Ecology  
Water Quality Program  
**DEC 02 2005**

December 2, 2005

**VIA FACSIMILE**

Kevin Hancock  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

**RE: Public Comments for the CAFO Permit**

Please find enclosed (2) pages regarding my public comments on the CAFO Permit. Thank you for the opportunity to comment on this draft proposal regarding the CAFO.

Respectively,



Kip Dunlap

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**RE: PUBLIC HEARING ON THE CONCENTRATED ANIMAL FEEDING  
OPERATION PERMIT**

Dear Mr. Hancock:

This permit was challenged by several industries and by environmental petitioners to the Court of Appeals Second Circuit. I have reviewed the decision of the Second Circuit and the EPA Perspective on the CAFO Decision dated March 4, 2005 and would like to submit the following comments. I believe the goal should be to evaluate the goals of the Petitioners issues and interpret the Courts decision to elevate any further challenges

The Farm Petitioners groups goal is to keep the waters of the State clean, comply with the applicable laws, and still allow the farmers to do what they do, produce the food to feed the nations, without being completely entangled with such a regulatory burden that they can no longer function. The farmers are already naturally burdened by the seasons and the weather in accomplishing the many task necessary in order to do their work without every aspect of their operation being available for public scrutiny and subject to a bureaucratic review that is instigated by a politically influenced neighborhoods or groups. The Environmental groups goal is keep the waters of the State clean and to regulate the CAFO operations with permits to accomplish that task because animal waste have been previously been found to be a source of pollution in waters of the State. The Department certainly should be able to accomplish both goals here.

The Petitioners challenges were narrowed down to challenges of the permitting scheme, challenges to the types of discharges regulated, and to the CAFO rules regarding effluent limitations. I believe the new draft CAFO permit addresses most of these matters appropriately. The EPA perspective on the Second Circuit decision was that the NMP (Nutrient Management Plan) be a condition of the permit and subject to public review and Ecology has drafted in their new permit that the NMP must be submitted with the permit application. However I believe that perspective to be unnecessary because that is not what the Court of Appeals decision stated. Their decision stated at PP 26:4 that a copy of the NPDES (National Pollutant Discharge

Elimination System) application and permit be made available for public review. The decision determined at PP 26:14 that the CAFO rules failed to require that the NMP be included in the permit and at PP 27:10 that under the CAFO rule the citizens would be limited to enforcing the mere requirement to only develop a NMP. The decision found at PP21: 4-11 that the Permit did not assure that the NMP would reduce land applications discharges in a way to achieve realistic goals and would not prevent a CAFO from misunderstanding or misrepresenting their specific situation. If the NPDES permit required that NMP be prepared and approved by an independent third party like the NRCS or other professionals who have the Technical experience and are certified specialist in the proper areas to design these plans. The plan could be reviewed in the submittal application and returned to the CAFO upon compliance and approval. These plans contain the site-specific details of the operation that need not be subject to public review. The Department simply needs to ensure that the NMP plans minimize the phosphorus and nitrogen concentrations and ensure the correct application rates.

The CAFOs that require a permit should be able to be covered under a general permit and not seek an individual permit coverage. If every CAFO is required to seek individual permit coverage or have their Nutrient Management Plans which contain all the site specific information open for public scrutiny it will be disastrous to the CAFO operator and the agricultural industry. It would allow the site-specific terms or conditions to be made by politicians who are untrained in these specific areas. Special interest groups also often influence them and it would open the door for corruption, discrimination, conflicts of interest, and all the other dangers of the political bureaucracy. This type of system removes the individual accountability regarding the regulators making the determinations for permitting. The Court stated on PP: 37:13 that the EPA has not treated the CAFO as agricultural in character. The CAFOs are not industrial industries; they are farms and should be treated as such. The agencies can involve the publics' participation in the drafting of the application guidelines and in the development of the General Permits. They do not need to have the publics' participation in each individual farm operation. I would like to thank you for the opportunity to comment on this draft proposal regarding the CAFO.

Sincerely,



Kip Dunlap  
Agricultural Producer  
Whatcom County Farm Bureau Member

Department of Ecology  
Water Quality Program  
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